Supreme Court, U.S.
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No. 96-1010

In The

Supreme Court of the United States

October Term, 1996

LARRY A. CROSSLEY

Petitioner,

v.

LIBERTY BANK & TRUST CO., THOMAS J. HROMATKA, C.E.O., HERTZ FARM MANAGEMENT INC., GARY LOOS AS RECEIVER, FARMERS CO-OP ASSOCIATION FOREST CITY, FARMERS CO-OP ELEVATOR CO. LELAND, DON SEVERSON, GARY STERLING, RONALD G. PYLE, RONALD PENNING, AND YET TO BE NAMED JOHN DOES.,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

SUPPLEMENTAL APPENDIX

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36pp

TABLE OF CONTENTS

Page

Appendix A - Opinion of the United States District Court for the Northern District of Iowa Central Division filed October 27, 1994 1

Appendix B - Opinion of the United States District Court for the Northern District of Iowa Central Division filed November 30, 1994 24

Appendix C - Opinion of the United States District Court for the Northern District of Iowa Central Division filed January 5, 1995 31

APPENDIX A - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION FIIED OCTOBER 27, 1994

No. C93-3083

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

LARRY A. CROSSLEY,

Plaintiff,

v.

Liberty Bank & Trust Co., etc., et al.,

Defendants.

Order Granting Defendants Motions to Dismiss

This matter comes before the court on the following motions: Defendants Farmers Co-op Elevator of Thompson-Rake[1], Ronald G. Pyle and Ronald Penning's ("Defendant Farmers Co-op Elevator") Motion to Dismiss (#28); Defendants Liberty Bank & Trust[2] and Thomas J. Hromatka's ("Defendant Liberty Bank & Trust") Motion to Dismiss(#29); Defendants Farmers Coop Association of Forest City, Don Severson, and Gary Sterling's ("Defendant Farmers Coop Association") Motion to Dismiss(#30); and Defendants Hertz Farm Management, Inc. and

[1]Defendant Farmers Co-op Elevator of Thompson Rake is incorrectly identified in the Complaint as Farmers Co-op Elevator Co. Thompson and Farmers Co-op Elevator Co. Leland.

[2]Defendant Liberty Bank & Trust is misidentified as Liberty Bank and Trust Co. in the complaint.

Gary Loos as receiver's ("Defendants Hertz and Loos") Motion to Dismiss Hertz Farm Management, Inc. and Gary Loos(#34)[3]. Plaintiff Larry Crossley has filed timely resistance's to Defendants' motions (#31,#37,#38 and #40). These matters are now deemed fully submitted.

I. BACKGROUND

On July 23, 1991, Plaintiff Larry Crossley filed his *pro se* complaint in *Crossley v. Liberty Bank & Trust*, No. C91-3050 (N.D. Iowa)("*Crossley I*"). In *Crossley I*, Crossley brought an action against Liberty Bank and Trust and other defendants claiming the defendants had violated his constitutional rights, and sought to recover under 42 U.S.C. §1983, §1985, § 1986, the Farm Credit Act, the Truth in Lending Act and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 241 and § 242. The core of Crossley's allegations in *Crossley I* were set out in paragraph 27 of the complaint:

> 27. Defendant FCBT and (Liberty Bank & Trust) with Defendant officials proceeded

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[3]While all four motions to dismiss are Rule 12(b)(6)motions, Defendants Hertz and Liberty Bank & Trust's motions either attach or incorporate by reference two Iowa court decisions concerning the dispute at the center of this case. The two cases, *Crossley v. Lindquist*, No. 2-669/92-593 (Iowa Ct. App. Feb. 23, 1993) and *Liberty Bank and Trust v. Crossley*, No. 13878 (Iowa Dist. Ct. Oct. 13, 1993), are attachments "A" and "B" to Defendant Liberty Bank & Trust's motion. Consideration of these decisions, as matters outside the pleadings, converts Defendant Hertz and Liberty Bank & Trust's respective Rule 12(b)(6) motions into motions for summary judgment. See Fed.R.Civ.P. 12(b)(6) and 56; *Sherwood Medical Indus., Inc. v. Deknatel, Inc.* 512 F.2d 724, 725 n.2 (8th Cir. 1975).

> to obtain Plaintiff's property through the use of notes unsignatured [sic] by Plaintiff knowing their actions were acts of "conversion" through the purchase of said real property at a sheriff's sale wherein Plaintiff's homestead was sold in violation of I.R.C. 561.22 never having been received by Defendants a "waiver" of homestead right, showing complete disregard to Plaintiff's constitutional and civil rights, heretofore described, and did inflict severe irreparable damages upon Plaintiff and innocent third parties.

On April 6, 1992, Judge O'Brien granted a motion to dismiss brought by defendants.

Judge O'Brien ordered that:

> if Plaintiff fails in his attempt to have the Iowa District Court's Order of November, 1990, overturned, he may re-file, without payment of additional fees, any new and different claims than those previously asserted.

Crossley I, No. C91-3050, at 9(S.D. Iowa filed Apr. 6, 1992). Judge O'Brien further noted that "[i]f such a refiling occurs the rulings in this case will still apply." *Id.*

On December 22, 1993, Crossley filed his Request to File in this matter. Following some attempts by the court to ascertain whether Crossley had attempted to overturn the Iowa District Court Order of November, 1990, and was raising "new and different claims from

those previously asserted", on May 19, 1994, Judge O'Brien ordered that Crossley had 20 days in which "to file a pleading setting forth any new and different claims he wishes to assert." On June 13, 1994, Crossley filed his 29 page *pro se* complaint in this case against these Defendants concerning their possession of the foreclosed upon real estate which was the subject of *Crossley I* and the sale of crops grown on that property subsequent to the foreclosure. In this case, Crossley asserts claims against Defendants grounded on purported violations of the First, Fourth, Fifth, Seventh and Fourteenth Amendments to the United States Constitution. He also asserts claims based on 18 U.S.C. § 1983, § 1985, § 1986, and pendent claims brought under Iowa Code § 537, § 561, § 646, § 654, and § 680.

II. FINDINGS OF FACT[4]

On March 23, 1973, Donald and Patricia Crossley entered into a real estate contract with Frances Ballard. In 1985 Donald and Patricia Crossley assigned their equitable interest in the property to the Liberty Bank & Trust.[5] The assignment was recorded on April

[4] The findings of fact include findings made by Judge O'Brien in *Crossley I* in his order granting Defendants' motions to dismiss. These findings also include facts drawn from the exhibits attached to the Complaint. The court notes that none of the parties have submitted a statement of material facts as to which there is a genuine issue to be tried. Furthermore, the parties do not dispute any of the exhibits attached to the Complaint, or the facts contained in those exhibits. The court, therefore, finds that there are no genuine issues of fact with respect to the exhibits attached to the Complaint nor the facts contained in those exhibits.

[5] Defendant Liberty Bank & Trust was formerly known as the Forest City Bank and Trust Company.

16, 1985. On October 31, 1986, Frances Ballard assigned her interest in the Ballard-Crossley contract to Larry Crossley. Subsequently on September 7, 1988, Ballard and Crossley executed an addendum to the assignment to reflect that Crossley would be considered the buyer of the real estate. On September 8, 1988, Donald and Patricia Crossley attempted to revoke their assignment to the Liberty Bank & Trust. On September 20, 1988, Donald and Patricia executed a quit claim deed to Ballard.

On October 20, 1988, Liberty Bank & Trust filed a petition seeking to foreclose upon the real estate. Larry Crossley, Patricia Crossley, and Donald Crossley were all named as Defendants in the foreclosure suit. The Crossley's brought counterclaims based on fraud and breach of contract. The counterclaims were denied and judgment was entered for Liberty Bank & Trust on May 13, 1991.[6] In the decree of foreclosure, the Iowa district court declared that:

> 2. The plaintiff's equitable mortgage as a lien is established as a lien against the real estate described above and is superior and paramount to the interest, liens and claims of the defendants, except to the extent of the vendor's interest in the real estate contract executed on March 23, 1973. The court need not decide in this proceeding whether Frances Ballard or Larry Crossley has legal or equitable title to the property, because that is not in issue in

[6]The decree of foreclosure is attached to the Complaint as Exhibit "A".

> this foreclosure action. The vendor's interest in the property, whomever may later be determined to hold it, is superior to the interest foreclosed upon by the plaintiff.
>
> 3. ...the plaintiff or whoever holds the certificate of purchase at the Sheriff's sale can satisfy the real estate contract underlying the equitable mortgage foreclosed on by plaintiff herein, by tendering the balance due on said contract, which is $95,230.00...The Clerk of Court shall release said real estate proceeds to whomever Frances Ballard and Larry Crossley agree shall be the recipient of said funds or upon further order of whatever court, tribunal, or arbitration panel Frances Ballard or Larry Crossley agree upon to determine the issue of legal title. The determination of legal title as between Frances Ballard and Larry Crossley shall in no way affect or delay plaintiff's foreclosure of its equitable mortgage.

On appeal, the Iowa Court of Appeals affirmed the district court. *See Liberty Bank & Trust v. Crossley*, No. 91-849 (Iowa Ct. App. Dec. 29, 1992).

Following the entry of the foreclosure decree, an execution upon that judgment was issued on May 17, 1991 by the Sheriff of Winnebago County, Iowa. Liberty Bank & Trust purchased the property at a sheriff's sale on July 17, 1991, for $405,271.34. The property

was subject to a six month redemption period.[7]

On February 21, 1992, Crossley filed a petition for declaratory judgment in Iowa District Court for Winnebago County, in which he requested that the sheriff's deed be set aside. The Iowa district court denied Crossley's claim and dismissed the petition. Crossley appealed, and on February 23, 1993, the Iowa Court of Appeals affirmed the decision of the Iowa District Court. *See Crossley v. Lilliquist*, No. 2-669/92-593 (Iowa Ct. App. Feb. 23, 1993.)[8]

While Crossley was appealing the foreclosure, the real estate was placed in receivership and Defendant Hertz Management, Inc. ("Hertz") was appointed the receiver. In 1991, Hertz rented the property to Crossley. On January 21, 1992, Liberty Bank & Trust received a sheriff's deed to the property.[9] In 1992, Hertz did not rent the property to Crossley. Crossley received a notice to quit on March 13, 1992. On March 25, 1992, a forcible entry and detainer action was filed in Iowa small claims court. On April 16, 1992, judgment was entered against Crossley. Crossley posted an appeal bond and appealed the decision. On May 26, 1992, the Iowa District Court reversed, holding that Liberty Bank & Trust should have brought its action in Iowa District Court rather than small claims court. In its ruling, the Iowa District Court also held that: "By this

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[7] A copy of the July 17, 1991, sheriff's certificate of purchase is attached to the Complaint as Exhibit "F".

[8] A copy of the Iowa Court of Appeals decision is attached to Defendant Liberty Bank & Trust's Motion to Dismiss as Exhibit "A".

[9] A copy of the sheriff's deed is attached to the Complaint as Exhibit "H".

ruling, the Court does not intimate that Larry Crossley had paramount title giving him a defense in the FED proceeding." Between March and May 1992, Crossley planted crops on the property. On June 30, 1992, the Winnebago County Sheriff received directions from Liberty Bank & Trust's attorney to proceed with a writ of possession.[10] Crossley was evicted from the property on July 31,1992.

In the fall of 1992, Liberty Bank & Trust had the crops on the property harvested and brought to Defendants Farmers Coop Association Forest City,[11] and Farmers Co-op Elevator of Thompson Rake.[12] Crossley subsequently brought an action in the Iowa District Court concerning his claim, under the doctrine of emblements, for the proceeds of the sales of the crops grown during the 1992 season. On October 13, 1994, the Iowa District court rejected Crossley's claims.[13] The Iowa District Court held that:

> When defendant Larry Crossley planted his crop in May of 1992, he did not have a tenant relationship and, as a result, the doctrine of emblements is not applicable in the instant case. See *Hecht v. Dittman*, 7 N.W. 495, 56 Iowa 679; *Everingham v Brayden*, 12 N.W.2d 142,

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[10] The directions are attached to the Complaint as Exhibit "J".

[11] Defendant Don Severson is the manager and Defendant Gary Sterling is the assistant manager of Defendant Farmers Coop Association Forest City.

[12] Defendant Ronald Pyle is the manager of Defendant Farmers Co-op Elevator of Thompson Rake.

[13] A copy of the Iowa District Court's decision in *Liberty Bank and Trust v. Crossley*, No. 13978 (Iowa Dist. Ct. Oct. 13, 1993), is attached to Defendant Liberty Bank & Trust's Motion to Dismiss as Exhibit "B".

> 58 Iowa 133; *Goldstein v. Munden*, 210 N.W. 444, 202 Iowa 381. The doctrine of emblements pertains to planted crops prior to a termination of tenancy. See 21A A.Jur.2d, *Crops*, § 25.
>
> The court finds that the defendant Larry Crossley had no right to plant the crop in May of 1992 and therefore has no right under the doctrine of emblements to the proceeds of the crop pursuant to the arguments submitted in defendant's motion.

Liberty Bank and Trust v. Crossley, No. 13978, at 3-4 (Iowa Dist. Ct. Oct. 13, 1993).

Crossley also brought motions in that action to dismiss Liberty Bank & Trust's offer of first refusal. On October 1, 1993, the Iowa District Court denied those motions, holding that:

> The Court finds that the plaintiff has complied with the provisions of Section 654.16(a) and has provided the defendants with adequate notice as to the proposed sale as well as giving notice prior to the proper recording of the sheriff's deed, and with the deed being submitted for filing in the proper form and substance.

Id. at 6 (Iowa Dist. Ct. Oct. 1, 1993).[4]

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[4] A copy of the Iowa District Court's October 1, 1993, ruling is attached to the Complaint as Exhibit "P.

III. ANALYSIS

A. Federal Rule of Civil Procedure 12(b)(6).

In considering a motion to dismiss for failure to state a claim upon which relief can be granted, a court must accept as true the well-pleaded factual allegations contained in the complaint and view them, together with all reasonable inferences which may be drawn from them, in the light most favorable to the plaintiff. *See Patterson v. Von Riesen*, 999 F.2d 1235, 1237 (8th Cir. 1993); *McCormack v. Citibank, N.A.*, 979 F.2d 643, 646 (8th Cir. 1992); *Murphy v. Lancaster*, 960 F.2d 746, 748 (8th Cir. 1992); *see also Concerned Citizens v. Nuclear Regulatory Comm'n*, 970 F.2d 421, 425 (8th Cir. 1992); *Fusco v. Xerox Corp.*, 676 F.2d 332, 334 (8th Cir. 1982); *Sladek v. Bell System Management Pension Plan*, 880 F.2d 972,975 (7th Cir. 1989); *Ellsworth v. City of Racine*, 774 F.2d 182, 184 (7th Cir. 1985), *cert. denied*, 475 U.S. 1047 (1986). A dismissal should be granted only if the plaintiff can prove no set of facts that would entitle the plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see McCormack*, 979 F.2d at 646; *Murphy*, 960 F.2d at 748; *see also Dicken v. Ashcroft*, 972 F.2d 231 (8th Cir. 1992).

B. Standard for Summary Judgment

The Eighth Circuit recognizes "that summary judgment is a drastic remedy and must be excercised with extreme care to prevent taking genuine issues of fact away from juries." *Wabun-Inini v. Sessions*, 900 F.2d 1234, 1238 (8th Cir. 1990). On the other

hand, the Federal Rules of Civil Procedure have authorized for nearly 60 years "motions for summary judgment upon proper showings of the lack of a genuine, triable issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Thus, "summary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed 'to secure the just, speedy and inexpensive determination of every action.'" *Wabun-Inini*, 900 F.2d at 1238 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986)); *Hartnagel v. Norman*, 953 F.2d 394, 396 (8th Cir. 1992).

The standard for granting summary judgment is well established. *Rule 56* of the Federal Rules of Civil Procedure states in pertinent part:

> Rule 56. Summary Judgment
>
> (b) For Defending Party. A party against whom a claim . . .is asserted . . . may, at any time, move for summary judgment in the party's favor as to all or any part thereof.
>
> (c) Motions and Proceedings Thereon. . . . . *The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.*

Fed. R. Civ. P. 56(b) & (c)(emphasis added); *see also Celotex Corp. v Catrett*, 477 U.S. 317, 322-23 (1986); *Munz v. Michael*, 28 F.3d 795, 798 (8th Cir. 1994); *Roth v. U.S.S. Great Lakes Fleet, Inc.*, 25 F.3d 707, 708 (8th Cir. 1994); *Cole v. Bone*, 993 F.2d 1328, 1331 (8th Cir. 1993); *Woodsmith Publishing Co. v. Meredith Corp.*, 904 F.2d 1244, 1247 (8th Cir. 1990); *Wabun-Inini*, 900 F.2d at 1238 (citing *Fed. R. Civ. P.* 56(c)).[15] A court considering a motion for summary judgment must view all the facts in the light most favorable to the nonmoving party, here Crossley, and give Crossley the benefit of all reasonable inferences that can be drawn from the facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)(quoting *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)); *Munz v. Michael*, 28 F.3d 795, 796 (8th Cir. 1994); *Allison v. Flexway Trucking, Inc.*, 28 F.3d 64, 66 (8th Cir. 1994); *Johnson v. Group Health Plan, Inc.*, 994 F.2d 543, 545 (8th Cir. 1993); *Burk v. Beene*, 948 F.2d 489, 492 (8th Cir. 1991); *Coday v. City of Springfield*, 939 F.2d 666, 667 (8th Cir. 1991), *cert. denied*,___U.S.___, 112 S. Ct. 1170 (1992).

Procedurally, the moving parties, bear "the initial responsibility of informing the district court of the basis for their motion

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[15] An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394 (8th Cir. 1992)(citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Hartnagel*, 953 F.2d at 394.

and identifying those portions of the record which show lack of a genuine issue." *Hartnagel*, 953 F.2d at 395 (citing *Celotex*, 477 U.S. at 323); *see also Reed v. Woodruff County, Ark.*, 7 F.3d 808, 810 (8th Cir. 1993). The moving parties are not required by Rule 56 to support their motion with affidavits or other similar materials negating the opponent's claim. *Id.*

"When a moving party has carried its burden under Rule 56(c), its opponent must do more than simply show there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. Crossley is required under Rule 56(e) to go beyond the pleadings, and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); *Celotex*, 477 U.S. at 324. Although "direct proof is not required to create a jury question, . . . to avoid summary judgment, 'the facts and circumstances relied upon must attain the dignity of substantial evidence and must not be such as merely to create a suspicion.'" *Metge v. Baehler*, 762 F.2d 621,625 (8th Cir. 1985) (quoting *Impro Products, Inc. v Herrick*, 715 F.2d 1267, 1272 (8th Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984)), *cert. denied*, 474 U.S. 1057 (1986). The necessary proof that the nonmoving party must produce is not precisely measurable, but the evidence must be "such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Allison v. Flexway Trucking, Inc.*, 28 F.3d 64,66 (8th Cir. 1994).

In *Anderson*, 477 U.S. at 249, *Celotex*, 477 U.S. at 323-24, and *Matsushita*, 475 U.S. at 586-87, the Supreme Court established that a summary judgment motion should be interpreted by the trial court to accomplish its purpose of disposing of factually unsupported claims, and the trial judge's function is not to weigh the evidence and determine the truth of the matter, but to determine whether there is a genuine issue for trial. *Johnson v. Enron Corp.*, 906 F2.d 1234, 1237 (8th Cir. 1990). The trial court, therefore, must "assess the adequacy of the nonmovants' response and whether that showing, on admissible evidence, would be sufficient to carry the burden of proof at trial." *Hartnagel*, 953 F.2d at 396 (citing *Celotex*, 477 U.S. at 322). If the nonmoving party fails to make a sufficient showing of an essential element of a claim with respect to which he has the burden of proof, then the moving parties are "entitled to judgment as a matter of law." *Celotex*, 477 U.S. at 323; *Woodsmith*, 904 F.2d at 1247. However, if the court can conclude that a reasonable trier of fact could return a verdict for the nonmovant, then summary judgment should not be granted. *Anderson*, 477 U.S. at 248; *Burk*, 948 F.2d at 492; *Woodsmith*, 904 F.2d at 1247. With these standards in mind, the court turns to consideration of the Defendants' motions for summary judgment.

C. Liberty Bank & Trust's Motion to Dismiss

The gist of Liberty Bank & Trust's Motion to Dismiss, which the court shall treat as a

motion for summary judgment, is that Crossley's complaint in this case raises no issues which were not previously decided either in *Crossley I* or the Iowa State courts. The court concludes that Defendant Liberty Bank & Trust is arguing that Crossley's claims are barred by res judicata.[6] The court agrees with this assessment.

Res judicata, or claim preclusion, applies if three requirements are met: "(1) the prior judgment was rendered by a court of competent jurisdiction, (2) the prior judgment was a final judgment on the merits, and (3) the same cause of action and the same parties or their privies were involved in both cases." *White v. Kelsey*, 935 F.2d 968, 969 (8th Cir. 1991); *see Murphy v. Jones*, 877 F.2d 682, 684 (8th Cir. 1989); *Headley v. Bacon*, 828 F.2d

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[6]The court notes that Defendant Liberty Bank & Trust's Motion to Dismiss does not use the term "res judicata." Nonetheless, it is clear from the language used in the motion that this is the doctrine being asserted by Defendant Liberty Bank & Trust. For example, in paragraph 12 of the motion to dismiss, it is asserted that "[a]ll issues in Larry Crossley's Complaint have been previously determined in the Iowa Courts as well as this Court."

1272, 1274 (8th Cir. 1987).[17] As the Eight Circuit has pointed out:

> The doctrines of res judicata and collateral estoppel serve to protect the finality of judgments. The doctrines are borne of the recognition that "endless litigation leads to chaos; that certainty in legal relations must be maintained; and that after a party has had his day in court, justice, expediency and preservation of the public tranquillity requires that the matter be at an end."

Smith v. Updegraff, 744 F.2d 1354, 1362 (8th Cir. 1984)(quoting *Scroeder v. 171.74 Acres of Land*, 318 F.2d 311,314 (8th Cir. 1968)).

The first two requirements are clearly satisfied here, leaving only the third requirement. In determining whether claims arise from the same cause of action, the Eighth Circuit has indicated that

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[17]In regard to Crossley's pendent state law claims, res judicata is an issue of substantive law requiring the application of the law of the forum state. *Kuehn v. Garcia*, 608 F.2d 1143, 1147 (8th Cir. 1979), *cert. denied*, 445 U.S. 943 (1980). This court, therefore, is required to give preclusive effect to state court judgments whenever the courts of the state would do so. *See Newman Signs, Inc. v Sinner*, 796 F.2d 247, 249 (8th Cir. 1986); *see also Allen v. McCurry*, 449 U.S. 90, 96 (1980). "Under Iowa law res judicata, or claim preclusion, bars relitigation of the same claim between parties or their privies where a final judgment has been rendered upon the merits by a court of competent jurisdiction." *Smith v. Updegraff*, 744 F.2d 1354, 1362 (8th Cir. 1984)(citing *National Farmers Union Property & Casualty Co. v. Nelson*, 260 Iowa 163, 147 N.W.2d839 (1967)). The doctrine of claim preclusion, as applied in Iowa, is therefore applicable under the circumstances of this case. *See generally Brown v. Monticello State Bank*, 360 N.W.2d 81,84 (Iowa 1984); *Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981).

> We have adopted the position of the Restatement (Second) of Judgments in determining whether two separately asserted claims arise from the same cause of action for res judicata purposes:
> " 'When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar ...the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose'".

Poe v. John Deere Co., 695 F.2d 1103, 1106 (8th Cir. 1982)(quoting Restatement (Second) of Judgments § 24(1) (1982)). What constitutes a "transaction" or "series of connected transactions" is

> "'to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage'".

Poe, supra, 695 F.2d at 1106 (quoting Restatement (Second) of Judgments § 24(2) (1982)). Put another way, whether two

> claims are the same for res judicata purposes depends on whether the claims arise out of the same nucleus of operative fact or are based upon the same factual predicate.

Murphy, 877 F.2d at 684-85.

In the prior state court proceedings, and in *Crossley I*, Crossley raised challenges to the propriety of the foreclosure proceedings, the sheriff's sale, the sale of the crops from the 1992 season, and the notice of first refusal. This series of legal actions, which all concerned the events surrounding the foreclosure of the real estate in question, are the same actions which Crossley challenges in this case. The court has little difficulty concluding that the claims asserted by Crossley involve "the same nucleus of operative fact" previously litigated in *Crossley I* and the Iowa State courts. Therefore, the court finds that Crossley's claims against Defendant Liberty Bank & Trust are barred by operation of res judicata, and the court shall grant Defendant Liberty Bank & Trust's motion for summary judgment.

D. Hertz and Loos' Motion to Dismiss. Defendants Hertz and Loos have incorporated the arguments raised by Defendant Liberty Bank & Trust in their motion to dismiss. Crossley's claims against Defendants Hertz and Loos concern the propriety of the sale of the crops for the 1992 season. For the reasons detailed above, the court concludes that Crossley's claims concerning the sale of the

1992 crops are barred by the doctrine of collateral estoppel or issue preclusion.

> Under Iowa law collateral estoppel, or issue preclusion, applies only where four requirements are met: (1)the issue concluded must be identical, (2)the issue must have been raised and litigated in the prior action, (3) the issue must have been material and relevant to the disposition of the prior action, and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Smith, 744 F.2d at 1362 (citing *Mauer v. Rohde*, 257 N.W.2d 489, 497 (Iowa 1977)); *see also Selchert v. State*, 420 N.W.2d 816, 818 (Iowa 1988).

Central to Crossley's claim against Defendants Hertz and Loos is the issue of his right to proceeds for the 1992 season. Application of the collateral estoppel test here clearly indicates that Crossley is barred from relitigating this issue in this forum. The issue of Crossley's interest in the 1992 season was at the center of the Iowa District Court's order of October 13, 1993, in *Liberty Bank and Trust v. Crossley*, No. 13978 (Iowa Dist. Ct. Oct. 13, 1993). That issue was resolved against Crossley in that action. *See* id. at 3. Therefore, the court concludes that Crossley is collaterally estopped from asserting his claims against Defendants Hertz and Loos. Defendants Hertz and Loos' motion for summary judgment is granted.

E. Farmers Co-op Elevator and Farmers Coop Association's Motions to Dismiss.[11] Both motions to dismiss raise identical defenses grounded on the Uniform Commercial Code, namely that they were good faith purchasers for value.

Article 2 of the Uniform Commercial Code applies to "transactions in goods." Iowa Code § 554.2102. The definition of "goods" is found in 554.2105(1):

> "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also include the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 554.2107).

Iowa Code §554.2403 provides that "[a] purchaser of goods acquires all title which the purchaser's transferor had or had power to transfer ...A person with voidable title has power to transfer a good title to a good faith purchaser for value." As the Third Circuit has explained:

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[11] Defendant Farmers Co-op Elevator's Motion to Dismiss is identical in all respects to the motion to dismiss filed by Defendant Farmers Coop Association.

> The good-faith purchaser exception developed over time in order to promote finality in commercial transactions and thus to encourage purchases and to foster commerce. It does so by protecting the title of a purchaser who acquires property for valuable consideration and who, at the time of the purchase, is without notice that the seller lacks valid and transferable title in the property.

United States v. Lavin, 942 F.2d 177, 186 (3rd Cir. 1991). In *Johnson & Johnson Products, Inc. v. Dal Int's Trading Co.*, 798 F.2d 100 (3d Cir. 1986), the Third Circuit described the purpose of the good faith purchaser exception:

> The purpose of the good faith purchaser doctrine, codified in Sections 2-403 and 2-102 of the UCC, is to promote commerce by reducing transaction costs; it allows people safely to engage in the purchase and sale of goods without conducting a costly investigation of the conduct and rights of all previous possessors in the chain of distribution.

Id. at 104.

At the time the sales of the 1992 crop occurred, Liberty Bank & Trust held a sheriff's deed to the real estate. Even were the court to assume that, at the time the crops were sold to the Defendant elevators, Liberty Bank & Trust only had a voidable title to the crops, the court concludes that from

the allegations contained in the Complaint and the facts drawn from the attachments to the Complaint, the record establishes that Defendant elevators were good faith purchasers for value at the time they purchased the grain. To act in good faith under article 2 of the U.C.C., a party must exhibit honesty in fact and fair dealing. *See* Iowa Code 554.2103(1)(b). There are no allegations in the Complaint that Defendant elevators acted in a dishonest or unfair manner at the time the sales were made. Although Crossley alleges in the Complaint that he told the Defendants that he considered the crops to be his personal property, the Complaint fails to state that this disclosure occurred prior to the sales. Even if the court assumes that the elevators were aware of the dispute over the property, under the circumstances of this case, the court concludes that Defendant elevators were not required to investigate the current status of Liberty Bank & Trust's interests in the crops. *See Johnson & Johnson Products, Inc.*, 798 F.2d at 104; *Robison v. Gerber Products Co.*, 765 F.2d 431, 433(4th Cir. 1985). Thus, because Defendants were good faith purchasers of the crops, Crossley is precluded from recovering against them, and the court shall grant Defendants Farmers Co-op Elevator and Farmers Coop Associations' respective motions to dismiss.

IV. CONCLUSION

For the reasons set forth above, the court grants the following motions: (1)Defendants Farmer Co-op Elevator of Thompson-Rake, Ronald G. Pyle, and Donald Penning's Motion to Dismiss; (2) Defendants

Liberty Bank & Trust and Thomas Hromatka's Motion to Dismiss; (3) Defendants Farmers Coop Association of Forest City, Don Severson, and Gary Sterling's Motion to Dismiss; and (4) Defendant Hertz Farm Management, Inc. and Gary Loos as receiver's Motion to Dismiss Hertz Farm Management, Inc. and Gary Loos. Having granting all of Defendants' respective motions to dismiss, the court orders that Plaintiff's complaint be dismissed with prejudice.[19]

IT IS SO ORDERED.

DATED this 27th day of October, 1994.

MARK W. BENNETT
U.S. DISTRICT COURT JUDGE

[19] The court shall deny Defendants Farmers Coop Association of Forest City, Don Severson and Gary Sterling's Rule 11 Motion for Sanctions (#33) and Defendants Farmers Co-op Elevator of Thompson-Rake, Ronald G. Pyle and Ronald Penning's Rule 11 Motion for Sanctions (#27). Plaintiff has proceeded pro se in this matter which concerns complex questions of commercial, financial and procedural law. A further consideration in denying Defendants' respective motions for sanctions is the fact that Plaintiff was invited by the court to file another case in this court once his state litigation was completed.

APPENDIX B - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION FILED NOVEMBER 30, 1994

No. C93-3083

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

LARRY A. CROSSLEY,

Plaintiff,

v.

Liberty Bank & Trust Co., etc., et al.,

Defendants.

Order Granting Motion Under Federal Rule of Civil Procedure 52(b) and 59

This matter comes before the court on Plaintiff Larry Crossley's Motion to Court Pursuant to F.R.C.P., Rules 52(b) and Rule 59 with Motion, Brief and Affidavit in Support of (#45) filed November 4, 1994. Defendants Hertz Farm Management, Inc. and Gary Loos filed a timely resistance to the motion on November 7, 1994. In his motion, Crossley asserts that the court made factual and legal errors in its order of October 27, 1994, granting Defendants' motions to dismiss.

A. Applicability of Rules 52 and 59

First, the court notes that under Federal Rule of Civil Procedure 59, the court has authority to reconsider its prior ruling here. *See, e.g., Kort v. Western Surety Co.*, 705 F.2d 278, 280-81 (8th Cir. 1983)(upholding trial court's power, under Rule 59(e), to rescind prior grant of summary judgment). Therefore, the court will consider the merits of Crossley's motion.

B. Merits of Motion

Considering Crossley's motion as one properly brought as a motion to reconsider, the court will consider the merits of the issues raised in the motion.

1. Conversion of Defendants' Motions.

Crossley asserts that the court erred in converting Defendants Hertz and Liberty Bank & Trust's respective 12(b)(6) motions into motions for summary judgment without first giving him notice of this fact. As the court noted in its decision, the two 12(b)(6) motions were converted to motions for summary judgment when the court considered matters outside the pleadings. In this instance, it was two Iowa state court decisions which were attached to the two defendants respective motions. The fact that matters outside the pleadings had been submitted in support of Defendants' motions could hardly have come as a surprise to Crossley. Furthermore, given the fact that in his resistance to Defendants' motions Crossley submitted matters outside the pleadings, the court was well founded in its assumption that Crossley was treating all Defendants' motions as motions for summary judgment. Finally, given his submission of materials outside the pleadings in support of

his resistance, Crossley does not state what further materials he would have submitted in support of his motion if the court had provided him with explicit notice that it was converting Defendant's motions.

Nevertheless, the Eighth Circuit has pointed out that:

> the procedural requirements of Rule 56 are to be strictly adhered to. *Ailshire v. Darnell,* 508 F.2d 526, 528 (8th Cir. 1974). That rule provides that a motion for summary judgment "shall be served at least 10 days before the time fixed for the hearing." Fed.R.Civ.P. 56(c). The purpose of this notice provision is to allow the opposing party a meaningful opportunity to resist the motion by submitting counteraffidavits. Therefore, the required notice cannot be dispensed with merely because a motion to dismiss is treated as a motion for summary judgment by the district court, and this is true even though more than 10 days have elapsed between the filing of the motion and the entry of the order of dismissal.

Winfrey v. Brewer, 570 F.2d 761, 764 (8th Cir. 1978); *see also Williams v. City of St. Louis,* 783 F.2d 114, 116 (8th Cir. 1986); *Jensen v. Klecker,* 599 F.2d 243, 245 (8th Cir. 1979); *Ailshire v. Darnell,* 508 F.2d 526, 527-28 (8th Cir. 1974); *Scott v. Courtesy Inns, Inc.,* 472 F.2d 563, 564 (5th Cir. 1973)

Here, the court concludes that it did not provide Crossley with sufficient notice that it was going to consider Defendants Hertz

Management, Inc. and Liberty Bank and Trust's respective motions to dismiss as motions for summary judgment. Therefore, the court shall permit Crossley and Defendants Hertz Management, Inc., Gary Loos, Liberty Bank & Trust Co., and Thomas J. Hromatka **10 days** in which to file such documents and materials permitted under Federal Rule of Civil Procedure 56 and any supplemental briefs these parties desire to file on the issues raised by Defendants' respective motions for summary judgment. Once these materials are filed, the court will then reconsider its order granting summary judgment for these Defendants.

2. Motion with Respect to the Other Defendants. Although the court will reconsider its decision to grant summary judgment, upon review of the other contentions raised by Crossley in his motion, the court finds no merit in these other issues raised in his motion. The court will briefly touch upon several points raised in the motion.

a. A Hearing on the Motions. Closely tied to the notice issue, Crossley further asserts that the court should not have ruled on the motions without first holding a hearing. It must be noted that none of the parties requested a hearing, and given the state of the record, the court was of the belief that none was necessary for proper disposition of the motions.

Federal Rule of Civil Procedure 78 provides in pertinent part:

> To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief

written statements of reasons in support and opposition.

Local Rule 14(c) provides that:

> Motions shall be submitted and determined upon the papers hereinafter provided. Oral argument of motions may be had on the court's own motion or on the written request and showing of cause by any party and upon order of the court. Such request shall be separately stated at the conclusion of the motion or memorandum and shall be noted in the caption.

The Eighth Circuit has upheld similar rules. *See Parish v. Howard,* 459 F.2d 616, 620 (8th Cir. 1972). Therefore, the court finds that the mere fact that it decided the motions without first holding a hearing on the motions provides no basis for relief from the court's previous order.

b. Notice of Motion. Crossley asserts that the court erred in ruling on the motions to dismiss to quickly following Defendant Hertz's attorney's submission of an affidavit in which he lays a foundation for one of the two Iowa court cases submitted with the motion to dismiss. The affidavit and attachments were served on Crossley on October 21, 1994, and the court ruled on the Defendants' motion on October 27, 1994. The court, however, did not consider any matters raised in the affidavit and makes no reference to it in its decision. Furthermore, Crossley again fails to state what, if any, materials he would have filed in response to the affidavit.

c. Factual Findings of the Court. Crossley also takes issue with a number of statements in the opinion. As an example, Crossley asserts in paragraph 6 that:

> 6. This Court is in error on page 14 of order, "Plaintiff did not in **CROSSLEY I**, challenge the sale of crops, or notice of first refusal, or Defendant Bank's possession of homestead. These events had not happened at the time of **CROSSLEY I** took place.

The court, however, never made such a statement. What the court did state was:

> *In the prior state court proceedings*, and in *Crossley I*, Crossley raised challenges to the propriety of the foreclosure proceedings, the sheriff's sale, the sale of the crops from the 1992 season, and the notice of first refusal.

Crossley v. Liberty Bank & Trust Co., No. C93-3083, at 14 (S.D. Iowa Oct. 27, 1994)(emphasis added). Although the language might possibly be interpreted by the reader to conclude that Crossley raised the same issues in the state court proceedings as he raised in *Crossley I*, the language was only intended to set forth the type of claims Crossley had raised in either his previous state court proceedings or in *Crossley I*. The court finds no error in this or any of the other factual contentions raised by Crossley.

d. Other Assertions. The court has considered all of Crossley's other assertions and finds them to be without merit.

C. Conclusion

The court will grant Crossley's motion in so far as it will reconsider its prior ruling granting the Defendants' respective motions for summary judgment. Crossley and Defendants Hertz Management, Inc., Gary Loos, Thomas J. Hromatka and Liberty Bank & Trust Co. shall have **10 days** in which to supplement the record if they so desire, including the filing of supplemental briefs on the issues raised by Defendants' respective motions for summary judgment.

With respect to the other Defendants, having found no basis for the court to modify or amend its prior ruling in this matter, the court shall deny Crossley's motion as to these Defendants' respective motions to dismiss.

IT IS SO ORDERED.

DATED this 30th day of November, 1994.

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MARK W. BENNETT
UNITED STATES DISTRICT JUDGE

APPENDIX C - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION FILED JANUARY 5, 1995

No. C93-3083

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CENTRAL DIVISION

LARRY A. CROSSLEY,

Plaintiff,

v.

Liberty Bank & Trust Co., etc., et al.,

Defendants.

Order Denying Motion Under Federal Rule of Civil Procedure 52(b) and 59

This matter comes before the court on Plaintiff Larry Crossley's Motion to Court Pursuant to F.R.C.P., Rules 52(b) and Rule 59 with Motion, Brief and Affidavit in Support of (#45) filed November 4, 1994. Defendants Hertz Farm Management, Inc. and Gary Loos filed a timely resistance to the motion on November 7, 1994, and December 14, 1994. In his motion, Crossley asserts that the court made factual and legal errors in its order of October 27, 1994, granting Defendants' motions to dismiss. On November 30, 1994, the court entered an order on Crossley's motion in which the court indicated that it would reconsider

it prior ruling granting Defendants' Hertz Farm Management, Inc. and Gary Loos ("Hertz"), and Liberty Bank & Trust Co.'s respective 12(b)(6) motions, which the court had converted into motions for summary judgment, on the grounds that it had converted and considered the 12(b)(6) motions into motions for summary judgment without first giving Crossley notice of this fact. A telephonic hearing on Crossley's motion was held on December 22, 1994. Plaintiff appeared pro se. Defendant Hertz was represented by Hayward L. Draper and Defendant Liberty Bank & Trust Co. was represented by Robert P. Cooper.[1]

The court converted Defendants' respective 12(b)(6) motions to dismiss into motions for summary judgment because the court took into account not only the allegations of the complaint, but also certain facts set out in public documents Defendants had attached to their motions. Such consideration or records and documents not attached to the complaint, or not expressly incorporated therein, is typically forbidden, unless the proceeding is properly converted into one for summary judgment under Rule 56. *See* Fed.R.Civ.P. 12(b)(6). "However, courts have made narrow exceptions for documents the authenticity of which are not disputed by the parties; for official public records; for documents central to plaintiffs' claim; or for documents sufficiently referred to in the complaint." *Watterson v. Page*, 987 F.2d 1,3 (1st Cir. 1993); *see Henson v. CSC Credit Serv.*, 29 F.3d

[1] The parties are to be commended for their presentation of this matter. Crossley's *pro se* presentation was well prepared and he conducted himself in a competent and professional manner.

280, 284 (7th Cir. 1994); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993), *cert. denied*, 114 S. Ct. 687 (1994); *Allen v. Westpoint-Pepperell, Inc.*, 945 F.2d 40,44 (2d Cir. 1991) *United States v. Wood*, 925 F.2d 1580, 1582 (7th Cir. 1991); *Chester County Intermediate Unit v. Pennsylvania Blue Shield*, 896 F.2d 808, 812 (3rd Cir. 1990); *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1198 (9th Cir. 1988) *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986); *Mack v. South Bay Beer Distrib., Inc.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. and Loan Assoc. v Solimino*, 501 U.S. 104 (1991); *see also Romani v. Shearson Lehman Hutton*, 929 F.2d 875, 8759 n. 3 (1st Cir. 1991); *Fudge v. Penthouse Int'l, Ltd.*, 840 F.2d 1012, 1014-15 (1st Cir.), *cert. denied*, 488 U.S. 821 (1988); *In re Wade*, 969 F.2d 241, 249 & n. 12 (7th Cir. 1992). *See generally* 5A C. Wright and A. Miller, *Federal Practice and Procedure* § 1357 (1990)("In determining whether to grant a Rule 12(b)(6) motion, the court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account.").

Accordingly, the court's decision of October 27, 1994, to convert Defendants' respective motions to dismiss to motions for summary judgment was unnecessary since the two state court documents were matters of public record which the court was free to consider in

deciding Defendants' motions. Thus, because summary judgment was not in fact involved, the court did not error in not fully complying with Rule 56's notice requirements. *See Mack*, 798 F.2d at 1282.

Even if the exception noted above is inapplicable in this case and the court was required to consider Hertz's and Liberty Bank and Trust Co.'s motions to dismiss as motions for summary judgment, the court has now provided the parties with the opportunity to supplement the record and be heard on those motions. Upon consideration of the merits of the parties' arguments, including those found in the parties' supplemental materials, the court has reconsidered its decision to grant summary judgment. The court concludes, however, that having found no basis upon which to modify or amend its prior decision to grant Defendants' respective motions for summary judgment, the court shall deny Crossley's motions with respect to these Defendants' motions for summary judgment.

The court, therefore, concludes, because no error was committed by it in ruling on Defendants' motions to dismiss, that Crossley's Motion to Court Pursuant to F.R.C.P., Rules 52(b) and Rule 59 with Motion, Brief and Affidavit in Support of (#45) is **DENIED.**

IT IS SO ORDERED.

DATED this 5th day of January 1995.

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MARK W. BENNETT
UNITED STATES DISTRICT JUDGE